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## Doing Justice to Young People

### Constructing crime and creating delinquents

#### *Chapter 4*

##### The problem of definition

Up to now, we have been primarily concerned with reviewing the processes associated with young people's identified characteristics and behaviour, and the theoretical frameworks within which these have been discussed. In other words, the focus has been on young people and what it is about them that influences what they do, especially where this is deviant or breaches conventional social norms. However, this is only one side of the coin, because such explanations tend to incorporate an assumption that what constitutes delinquency is essentially fixed and timeless. It is a 'given', acting as a constant benchmark against which behaviour may be judged. Therefore, a critical analysis of the relationship between young people and criminal justice is required to problematise this kind of assumption. How is it that certain types of behaviour come to be categorised as antisocial or criminal, how is it, equally, that some young people come to be associated with that behaviour? How are 'young offenders' produced, in other words, by the interplay of ideologies, structures and systems and the lives of young people themselves?

The starting point for this kind of discussion is not, therefore, the specific young person, but the methods and mechanisms by which social order and disorder are constituted, and deviant populations characterised. The processes by which certain groups are demonised, or 'othered' (Garland, 2001) are particularly important, if we are to understand how youth crime and youth justice are constructed and take the forms they currently do.

The initial question, then, for these purposes relates to the origins and meaning of the idea of crime. It is not an objective term since certain types of behaviour can at different times be defined as criminal or not, and as we know, it is subject to an ongoing process of definition as it comes to be applied *in situ*, and as the outcome of contextualised social interactions (Cicourel, 1968, for example). How the term comes to be applied specifically to young people, and becomes 'youth crime' in the process, is at this point only a subsidiary question. The primary focus is on the issue of crime itself as a mechanism for organising social and moral order and creating important distinctions between legitimate and illegitimate activities and lifestyles. It is only subsequently that consideration will turn to the interaction between these processes of establishing social order and norms and the population (and subsections of it) defined by age and attributes variously as young people, juveniles, adolescents, teenagers or 'youth'. As will become clear, the material consequences of this coincidence of powerful social constructions may be quite dramatic and appear to give rise to a number of moral certainties and commonly accepted truths; whilst, at the same time, being based on interlocking but variable constructs, they may also be seen to give the appearance of unity and coherence to a range of dynamic and changing forces which are inherently unstable and contested. We are thus brought face to face with the realisation that the kinds of knowledge and 'objective' evidence we have about young people and their crimes depend on a series of assumptions and contingent social realities which are themselves open to debate and transformation. This, as we shall

see later, is a fundamental driver of the call to adopt different ways of characterising and responding to the 'delinquencies' of the young.

### Discourse and crime

Although the starting point for this discussion could be the material origins and basis of social order, it is equally helpful to begin by reflecting on the contemporary concern with the nature of 'discourses' and the ways in which these operate to construct and order our social lives. This has become an increasingly prominent element in current debates about how systems of meaning and social processes are organised and maintained (up to a point).

In order to account for the way in which social order is constructed and (to an extent) maintained, it may prove helpful to turn to the type of argument developed by authorities such as Gramsci (1971) and Foucault (1979, 1980). These sources are important for their contribution to our understanding of the processes by which the underpinning logic and necessity of social systems is established and sustained. Their accounts suggest plausible ways of making sense of the mechanisms of social cohesion and control which make contemporary forms of organisation appear 'normal' and justifiable. Gramsci's formulation of the idea of 'hegemony', for example, offers a means of capturing the logic of authority, control and regulation. The social relations in place at any one time therefore appear to be the natural order of things, and provide an inbuilt rationale for existing forms of dominance and subordination:

Social control... takes two basic forms: besides influencing behaviour and choice *externally*, through rewards and punishments, it also affects them internally, by moulding personal convictions into a replica of prevailing norms. Such 'internal control' is based on hegemony, which refers to an order in which a common social-moral language is spoken, in which one concept of reality is dominant, informing with its spirit all modes of thought and behaviour. (Femia, 1981)

Social control in this sense is distinguished from pure force, and depends to a large extent on ready acceptance of the ideas and principles underpinning the prevailing form of social organisation. Control depends on 'consent', and on the recognition of the legitimacy of the way institutions are ordered, including schools and other sources of social and moral leadership. This means that there is a form of logical coherence to the ways in which norms, rules and conventions of behaviour are organised, which appears to be the natural consequence of the 'way things are'. And so, there is also a degree of consistency between the way in which social relations and the rules of everyday behaviour operate, on the one hand, and the more formal and authoritative regulatory systems and machineries which are incorporated in structures of law and governance.

It is in this way that much of the organisation of day-to-day life depends on a particular type of 'order' (Hall et al, 1978, p. 202). That is to say, although there is a capacity within the machinery of the state and the establishment to resort to direct use of force to retain control, this is not the option of first resort, being inefficient and in the end self-defeating, losing its claims to legitimacy. Rather, control is maintained through mechanisms of 'cohesion':

In this respect, Gramsci argued, the state had another, and crucial, aspect or role besides the legal or coercive one: the role of leadership, of direction, of education and tutelage – the sphere, not of ‘domination’ by force, but of the ‘production of consent’.... The legal system – the site, apparently, of coercion – also had a positive and educative role to play in this respect.... (Hall et al, 1978, p. 202)

As Hall and colleagues observe, ‘society clearly works better’ or more efficiently, at least, where the population accepts the logic and desirability of the established order, recognising the legitimacy of existing rules and processes; that is to say, where the people ‘learn to discipline themselves...’. Clearly, there are certain identifiable points in history where this type of consensual arrangement and willing acceptance of state authority breaks down, as in early 20<sup>th</sup> century Italy, which was the central focus of Gramsci’s writing; but, nonetheless, for most of the time it does seem to have a central part to play in maintaining stability and order.

‘The Law’, then, becomes the primary vehicle for representing and maintaining the consensus around what is acceptable in thought and deed (Gramsci, 1971, p. 246). It is the mechanism by which the common good is specified, in terms of setting limits to behaviour and constructing abstract notions of infraction and criminality. By virtue of its apparent ‘neutrality’ (p. 195), and its representation of an apparent common good external to individual interests, it performs a powerful ‘educative’ (p. 247) function ‘and tends to create a social conformism which is useful to the ruling group’s line of development’ (p. 195). Whilst it may be working essentially in the interests of a specific (dominant) social faction, the law is nonetheless more effective as a means of securing widespread consent and cooperation, to the extent that it is ‘autonomised’ (Hall et al, 1978, p. 206). By appearing impersonal and by relying on principles of equal rights and impartial administration, the law is highly effective in practical terms in securing popular support, even where it tends to operate against the interests of large sectors of the general population